IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

CRL.A.No. 625 of 2003()

SC.286/2000 COURT OF ADDL.SESSIONS JUDGE (ADHOC-I), ERNAKULAM

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APPELLANT: 1ST ACCUSED:

MURALEEDHARAN, S/O. PADMANABHAN,
KUNDEPPARAMBIL VEEDU, NEAR SUBRAMANIA TEMPLE,
VADUTHALA, CHERANELLOOR, KANAYANNUR TALUK.

BY ADV. SRI.T.V.PRABHAKARAN
SRI.S.RAJEEV
SRI.BABU S. NAIR

RESPONDENT: COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO.237/CR/98 OF CB-CID,
ERNAKULAM) (ORIGINAL CRIME NO.421/97 OF
ERNAKULAM TOWN NORTH POLICE STATION).

BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-7-2007 , THE COURT ON 23/07/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl. A. No. 625 of 2003

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Dated this the 23rd day of July, 2007

JUDGMENT

Accused in S.C.No.286/2000 on the file of the Court of the Addl. Sessions, Judge (Adhoc-I), Ernakulam is the appellant. He faced trial for the offences punishable under section 498(A), 304(B) and 306 read with section 34 IPC. The prosecution allegation against the appellant and other accused is that the marriage of deceased Reeja and the appellant had been solemnized on 20-4-1997 as per the customary rites and after the marriage they were living together in the matrimonial house. But deceased Reeja committed suicide by consuming poison on 29-12-1997 due to the harassment of the appellant and other accused. To prove the allegation, the prosecution examined PWs.1 to 17 and Exts.P1 to P18 and MOs.I to III were marked. After closing the prosecution evidence the appellant and other accused were questioned under section 313 Cr.P.C.. They denied the prosecution allegation. Exts.D1 toD7 were marked on the side of the defence. However, after considering the evidence the trial court found the appellant guilty of the offence punishable under section 498(A) and he was convicted thereunder and sentenced to undergo rigorous imprisonment

for two years and to pay a fine of Rs.20,000/- and in default of payment of fine to undergo simple imprisonment for nine months. It was also ordered that if the fine amount is realized, an amount of Rs.15,000/- should be paid to the parents of deceased, PWs.1 and 3, as compensation under section 357(1) Cr.P.C. The above conviction and sentence awarded against the appellant are under challenge in this appeal.

2. This Court heard learned counsel for the appellant and the learned Public Prosecutor.

3. Learned counsel for the appellant has taken the following contentions to challenge the judgment under appeal:- Firstly, it is contended that the trial court has committed serious error in finding the appellant guilty under section 498(A) IPC placing reliance on the evidence of PWs.1 to 3 and 5. Secondly, it is contended that there is no evidence to prove that deceased Reeja was harassed or subjected to any cruelty by the appellant. Thirdly, it is contended that if the evidence is accepted, the prosecution had failed to prove that Reeja had committed suicide due to the harassment of the appellant. Lastly, it is contended that the trial court has misread section 498(A) IPC to find the appellant guilty under the above section.

4. Question to be considered in this appeal is whether the finding of the trial court is sustainable or not?

5. It is the prosecution case that as per the evidence of PWs.1 to 3 and 5 deceased Reeja was subjected to cruelty by the appellant and other accused which led deceased Reeja to commit suicide. PW.1 is the father of the deceased. He deposed that the appellant left the house of deceased on the next day of the marriage and he came back only after two days. He also stated that the appellant and deceased Reeja came to the house of PW1 on the next Sunday and the appellant left the place leaving Reeja and nothing was heard about the appellant about one week. He also stated that when the appellant would not allow Reeja to keep her dresses in his almirah, an almirah was purchased by him and given to deceased Reeja. According to him, the appellant never used to purchase clothes for her and he purchased some sarees for her. But at the time of inquest PW1 stated that his daughter Reeja never told him or any member of his family that the appellant harassed her. PW1 had given statement to the Assistant Commissioner of police that the appellant never asked Reeja about dowry and his daughter had not told him about any difference of opinion between them. PW2 is the one of the friends of deceased Reeja. She had stated that she know Reeja personally, as they were working together. She stated that deceased Reeja

told her that there was no sexual intercourse between Reeja and the appellant. She stated that deceased Reeja told her about an attempt to snatch her chain during power cut and deceased Reeja had got suspicion about the brother of the accused as the culprit. She also stated that deceased Reeja informed this to the appellant, but he had not taken any action. From the evidence of this witness it is not possible to conclude that deceased Reeja was subjected to cruelty as contemplated under section 498-A IPC. PW3, mother of deceased Reeja, stated that the brothers and sister-in-law of the appellant were behaving with deceased Reeja in a cordial manner. She also stated that after the marriage both the appellant and Reeja came to their house and the appellant left the place leaving Reeja at the house and after two days she was taken to the matrimonial house by the brother and sister-in-law of the appellant. It has come out in evidence that the appellant is a poojari and he had gone for pooja and came back after one week. PW5 is the cousin of deceased Reeja. She stated that deceased Reeja told her that there was no physical union between the appellant and deceased Reeja. The evidence of PW5 is not corroborated by any other witness. This witness had not stated any specific instance that deceased Reeja was subjected to cruelty by the appellant or other accused. The evidence of the above witnesses do not prove that the appellant or other accused has committed

cruelty towards deceased Reeja as alleged by the prosecution. It is relevant to note in Ext.P3 First Information Statement given by PW1 before the police on 29-12-1997 in which PW1 had stated that "മുരളീധരൻ അവളെ പീഠിപ്പിക്ക ുകയോ മറ്റൊന്നും ശല്യം ചെയ്തതായി അവൾ എന്നോടൊ വീട്ടിലുള്ള മറ്റ ുള്ളവരോടൊ പറഞ്ഞിട്ടില്ല എന്ന ു മൊഴികൊട ുത്തിട്ടില്ല. But PW14 admitted that such statement was given by PW1. That part it has come out in evidence that the case was registered originally as an unnatural death and inquest was conducted by PW4 Tahsildar. At the time of inquest PWs.1 and 3 were questioned by PW4 and their statements were recorded. In that statement neither PW1 nor PW3 had no case that the appellant harassed their daughter Reeja. Pws.13, 15 and 16 were the police officials who questioned the witnesses and they had given evidence before the court that the witnesses had not stated anything regarding the harassment made by the appellant or any other accused in the the case. However, the trial court found that the the appellant was not giving a family life to his wife Reeja and he was always avoiding her and was not at all bothered about the self esteem of his wife and he was not giving proper protection to his wife even when he was informed by his wife that his brothers were attempting to make advances towards her and the cumulative effect of all these factors had given mental torture to deceased Reeja. To prove an offence under section

498(A) IPC, the prosecution must prove that a woman was subjected to such cruelty. In Explanation to Section 498-A IPC the word "cruelty" is defined as follows:-

> **(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman, or**
>
> **(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."**

There is no evidence to prove that deceased Reeja was subjected to any physical or mental cruelty and that apart no witness had given evidence to show any specific instance that deceased Reeja was subjected to cruelty. Ext.D4(a) statement given by PW1 would show that neither the appellant nor his family members had subjected deceased Reeja to cruelty. Hence, the prosecution had miserably failed to prove that the death of deceased Reeja was due to any harassment or any cruelty. The evidence of PW1 or PW3 would not show that deceased Reeja was subjected to any harassment with a view to coercing her or any person related to meet any lawful demand for any property or valuable security. The only evidence is that before the death of deceased Reeja, the appellant demanded Rs.25,000/-, but evidence

of PW1 would show that deceased Reeja came to the house of PW1 for requesting money from PW1.

7. In the above circumstances, the finding of the trial court is perverse and it is liable to be set aside. Hence, the finding entered by the trial court against the appellant is set aside and the appellant found not guilty of an offence as contemplated under section 498A IPC. He is acquitted of the charge. Bail bond of the appellant shall stand cancelled.

The appeal is allowed as above.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No. 625/2003

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Judgment

23-7-2007